



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Complere Inc.
File: B-257946
Date: November 23, 1994

F. Kevin Owen for the protester
Deidre A. Lee and Kevin F. Kouba, Esq., National Aeronautics
and Space Administration, for the agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Allegation that agency misevaluated protester's proposal is dismissed as untimely where the allegation is based on information learned at a debriefing, but was not filed within 10 working days after the debriefing.
2. Allegation that agency was biased in favor of incumbent and attempted to direct award to that contractor is denied where protester has not submitted any relevant evidence supporting its assertions.

DECISION

Complere Inc. protests the proposed award of a contract to MCAT Institute under request for proposals (RFP) No. 2-35724(JWS), issued by the National Aeronautics and Space Administration (NASA) for experimental and theoretical research and research support in fluid dynamics for NASA's Fluid Dynamics and Aerodynamics Divisions.

We deny the protest in part and dismiss it in part.

The requested research support previously had been provided under cooperative agreements with MCAT, a not-for-profit organization. As the result of a management review, NASA determined that these services were more properly suited for a contract and should be obtained through a competitive procurement. The RFP contemplated the award of a cost reimbursement contract. The solicitation contained three evaluation factors: (1) mission suitability, (2) cost, and (3) relevant experience, past performance and other considerations; the first two factors were equal in importance and each was more important than the third factor. Under the mission suitability factor, the RFP provided for the evaluation of several subfactors including

key personnel and understanding the requirement; with the latter subfactor including consideration of, among other things, proposed staffing plans and responses to three sample problems.

Initial proposals were submitted by the protester and MCAT. The proposals were evaluated and each offeror participated in discussions and submitted a best and final offer (BAFO). After evaluating the BAFOs, MCAT was chosen for award primarily based on its higher mission suitability score and lower probable cost.

In its protest, Complere argued that in evaluating Complere's proposal under the mission suitability and cost factors, NASA did not perform a complete review or seek clarification of Complere's staffing plans and estimated probable costs.

In response to these contentions, NASA stated in its agency report that it evaluated Complere's proposal in accordance with the solicitation criteria and pointed out that during discussions it questioned Complere concerning its staffing plan. NASA also explained its evaluation of Complere's proposal under the mission suitability and cost factors. Specifically, concerning the evaluation of Complere's staffing plan, NASA explained that there was one minor weakness due to a lack of detail in the proposal regarding the coverage of health benefits; life insurance; and pension plans. Concerning the evaluation of Complere's cost proposal, NASA stated that it significantly lowered Complere's proposed cost because Complere used a higher number of productive labor hours than called for in the RFP. On the other hand, NASA slightly increased Complere's proposed cost because Complere had not used the same general and administrative rate for the optional additional level of effort as it had used for the base period, as required by the solicitation. NASA's explanation is consistent with the record, and in the absence of any specific rebuttal by Complere, we have no basis to conclude that NASA's evaluation of Complere's staffing plan or cost proposal was unreasonable.¹

¹In its protest, Complere also complained that NASA failed to provide a tape recording of the discussions held with the firm. NASA responded to this assertion in its report, and in its comments Complere indicated that while it did not agree with NASA's recitation of the facts surrounding the tape, it did not believe that further discussion of this issue was warranted. Accordingly, we consider this issue abandoned. See Communication Network Sys., Inc., B-255158.2, Feb. 8, 1994, 94-1 CPD ¶ 88.

In its September 6 comments on the agency report, based on information which had been provided in an August 10 debriefing, Complere--for the first time--complained that NASA did not use the actual costs for incumbent employees in evaluating Complere's cost proposal. Complere also complained that NASA used Complere's proposed costs for health, life, and pension benefits even though NASA knew that lower rates would probably be negotiated if Complere were awarded the contract. Regarding the mission suitability factor, Complere asserted that NASA incorrectly evaluated the experience of its three principal investigators and unreasonably evaluated its proposal as if it were offering only three principal investigators, and that the agency did not ask for clarification of Complere's response to the sample tasks. Complere also claimed that NASA improperly evaluated its proposal under the relevant experience and past performance factor.

We will not consider these evaluation issues which Complere first raised in its comments. Under our Bid Protest Regulations, a protest based on other than an apparent impropriety in the solicitation must be raised within 10 working days after the protester knows or should have known the basis for protest. 4 C.F.R. § 21.2(a)(2) (1994). Each new protest ground must independently satisfy the timeliness requirements of our Regulations, which do not contemplate the piecemeal presentation or development of protest issues with the possible resulting disruption of the procurement of goods and services. Booz, Allen & Hamilton, Inc., B-249236.4; B-249236.5, Mar. 5, 1993, 93-1 CPD ¶ 209; Hampton Roads Leasing, Inc.--Recon., B-244887.2, Apr. 1, 1992, 92-1 CPD ¶ 330. Here, Complere learned of the allegedly improper evaluation of its proposal and of the agency's failure to seek clarification of Complere's responses to the sample tasks at the August 10 debriefing. Since Complere did not protest these issues until September 6, more than 10 working days later, they are untimely. Id.

Complere also asserts that in an attempt to direct the award to MCAT, NASA officials colluded with MCAT and another not-for-profit organization which is the incumbent under another NASA cooperative agreement. Complere basis this assertion on the fact that the solicitation contemplated the award of a cost, no-fee contract and argues that only a not-for-profit organization such as MCAT could benefit from such an arrangement. In addition, Complere asserts that the evaluation criteria favor MCAT. Specifically, Complere explains that NASA assigned 350 and 300 points respectively to the key personnel and sample task subfactors out of the 1,000 points assigned to the mission suitability factor. Complere reasons that since the sample tasks closely parallel incumbent research and since the incumbent is

permitted to use the 35 key personnel it is currently using to perform the research, MCAT has an unfair advantage under these subfactors and thus under the mission suitability factor generally. Finally, Complere asserts that MCAT and the other not-for-profit organization which is performing similar work for NASA exchanged resumes in order to ensure that each would be in the best position to be awarded contracts² and that MCAT was permitted to prepare its proposal on government time using government-furnished equipment.

Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. Rather, where a protester contends that contracting officials were motivated by bias or bad faith, the record must contain convincing proof that the agency showed favoritism or acted with intent to harm the protester. See Virginia Telecommunications & Sec., Inc., B-247368, May 20, 1992, 92-1 CPD ¶ 456. Here, the record does not support Complere's allegation that NASA was biased against the firm and was attempting to direct the award to MCAT.

First, concerning the solicitation indication that the agency contemplated a no-fee contract, NASA explains that it issued the solicitation with the expectation of awarding a cost, no-fee contract because it received inquiries from several not-for-profit organizations that were interested in competing for the requirement; and the agency understood that such firms could not submit offers for a cost-plus-fee contract. While Complere responds that inquiries are not the same as offers, NASA had no way of knowing when it issued the solicitation which firms would respond. In any event, we do not see how the RFP indication that NASA contemplated use of this particular contract type

²This other organization submitted a proposal under a different NASA solicitation.

³To the extent that Complere is simply complaining about alleged solicitation improprieties, the protest is untimely since it was filed after the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). However, Complere suggests that it only became aware that the solicitation had been structured to favor MCAT after the evaluation results became available. Under these circumstances, while it is not clear that this portion of the protest is timely, we will consider the merits since it is our practice to resolve doubts over the timeliness of a protest in the protester's favor. Quintron Sys., Inc., B-249763, Dec. 16, 1992, 92-2 CPD ¶ 421.

demonstrates improper favoritism since the solicitation expressly provided that a cost-plus-fee contract was permissible, in which case the proposed fee would be included in evaluating a proposal's probable cost.

There also is no indication in the record that NASA chose the evaluation criteria in order to benefit MCAT. NASA has explained that the sample tasks chosen for this competition parallel incumbent research to the extent that the incumbent research relates to NASA's ongoing research programs. NASA also explains, however, that none of the sample tasks were designed to directly mirror the incumbent's work and that the solicitation was designed to provide a means of determining which offeror could best perform the work and provide a fresh approach. Further, Complere has provided no evidence which suggests that NASA chose the sample tasks with the intent of assisting MCAT.

Similarly, while Complere complains that NASA assigned 350 points to key personnel and that MCAT will benefit from its ability to use its incumbent personnel, there is no indication that NASA chose key personnel as a subfactor or assigned it 350 points with the intent of providing an advantage to MCAT or a disadvantage to Complere. In a research contract, the personnel doing the research are generally crucial to the project and it is thus reasonable to assign key personnel a significant portion of the evaluation points. While MCAT may have an advantage since its key personnel are currently performing the contract, this is not an advantage that was improperly created by NASA. It is not unusual for an offeror to enjoy an advantage in competing for a government contract by reason of its incumbency, and there is no requirement for the procuring agency to equalize that advantage so long as the advantage is not the result of preferential treatment or other unfair action by the procuring agency. Maxwell Labs., Inc., B-253737, Oct. 19, 1993, 93-2 CPD ¶ 239.

Finally, Complere does not explain why it would have been improper for MCAT and another firm to exchange resumes. There is no evidence that those firms were doing anything other than proposing that in the event of award, they would hire and use individuals working for other firms, a common practice. In fact, according to Complere, it also proposed the use of 35 of MCAT's incumbent employees. Similarly, Complere has not presented any evidence to show that NASA permitted MCAT to prepare its proposal on government time, or with the use of government equipment. Accordingly, we have no basis to conclude that NASA conducted the

procurement in a way to direct award to MCAT and away from Complere, or to otherwise harm Complere or assist MCAT.

The protest is denied in part and dismissed in part.

/s/ Paul Lieberman
for Robert P. Murphy
Acting General Counsel

'In the comments it submitted in response to NASA's report, Complere advised our Office that NASA's Inspector/General (IG) has initiated an investigation into NASA's actions. NASA has confirmed that its IG has initiated an investigation based in part on Complere's complaints. NASA has informed our Office that the IG will not provide any details concerning the nature of the investigation. With this in mind, we point out that our decision is not based on an investigation; and our Office is not privy to whatever information is before the NASA IG. Our decision is based on a review of the written record presented to our Office by the parties. See American Material Handling, Inc., B-250984, Feb. 25, 1993, 93-1 CPD ¶ 189. Irrespective of our disposition of Complere's protest, NASA may take such action as is appropriate based on the outcome of the IG's investigation.